

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 7 Case
	)	Number <u>95-10506</u>
FRANK DONALD GRAVES, JR.	)	
ELIZABETH ALESE GRAVES	)	
	)	
Debtors	)	
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EDWARD J. COLEMAN, III,	)	FILED
CHAPTER 7 TRUSTEE	)	at 3 O'clock & 21 min. P.M.
	)	Date: 10-27-95
vs.	)	
	)	
FRANK DONALD GRAVES, JR.	)	

**ORDER**

Pursuant to notice hearing was held on the trustee's objection to exemptions claimed by the debtor, Frank Donald Graves, Jr. Based upon the evidence presented and post-hearing briefs submitted, I make the following findings of fact and conclusions of law sustaining the objection.

The objected to exemption was a claim of \$5,900.00 in one 1992 Chevrolet Stepside Truck ("the truck") consisting of amounts aggregated under several categories of Official Code of Georgia (O.C.G.A.) §44-13-100<sup>1</sup> (Georgia statutory bankruptcy exemptions

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<sup>1</sup>The total claimed exemption was calculated as follows:

\$ 5,000.00	§44-13-100(a)(1)
exemption)	(homestead

allowed under 11 U.S.C. §522(b)(2)(A)). Elizabeth Graves, the codebtor in this case and wife of debtor Mr. Graves, asserts an exemption of \$6,400.00 in the same truck, with no objection by the trustee. The truck has a \$13,000.00 value as of April 3, 1995, the date the petition in bankruptcy was filed. The truck was purchased in August, 1994 from Mr. Graves' brother with funds advanced by Ms. Quila Chase, Mr. Graves' grandmother. The State of Georgia Certificate of Title to the truck was originally issued in Ms. Chase's name, but a transfer was effected in November, 1994 with Mrs. Graves listed as the owner, and no lien held by Ms. Chase. Mr. Graves is employed and pursuant to the loan by Ms. Chase makes the payments to his grandmother on the truck. Mrs. Graves is not employed outside the home. Mr. Graves is listed as the sole insured on the truck.

As to Mr. Graves' assertion of an "equitable interest" in the truck, the trustee acting on behalf of the jointly administered bankruptcy estate of Mrs. Graves has standing to object to his claimed interest and exemption. In bankruptcy, property interests are determined under State law. "In the absence of any controlling federal law, 'property' and 'interests in property' are creatures of

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500.00	§ 4 4 - 1 3 - 1 0 0 ( a ) ( 3 )
(remainder of automobile	exemption)
<u>400.00</u>	§ 4 4 - 1 3 - 1 0 0 ( a ) ( 6 )
("wildcard" exemption)	
\$ 5,900.00	Total claimed exemption

state law.” Barnhill v. Johnson, 503 U.S. 393, 112 S.Ct. 1386, 1389, 118 L.Ed.2d 39 (1992) (quoting McKenzie v. Irving Trust Co., 323 U.S. 365, 369-70, 65 S.Ct. 405, 407-8, 89 L.Ed. 305 (1945)). Federal bankruptcy law acts upon defined legal interests and state law creates those interests. See Butner v. United States, 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979); In re Livingston, 804 F.2d 1219, 1221 (11th Cir. 1986); Wallace v. Meehan (In re Meehan), 162 B.R. 367, 373 (Bankr. S.D.Ga. 1993). Additionally, §522(b)(2) of the Bankruptcy Code abdicates federal authority over allowable exemptions to the states. Georgia has through O.C.G.A. §44-13-100(b) made the election and availed herself of this license to legislate. The allowable statutory exemption scheme for Georgia domiciliaries is found in O.C.G.A. §44-13-100(a) (“any debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy, [property of the type and character described in subsections (a)(1) through (a)(11)]”). Accordingly, Mr. Graves’ claim to an equitable interest in the truck for purposes of availing himself of his statutory exemption hinges on his interest in property under Georgia law.

Mr. Graves’ rights under Georgia’s Motor Vehicle Certificate of Title Act (O.C.G.A. §§40-3-1 to -95) are well-defined. The ownership interest of a non-titled transferee in an automobile is explained:

(d) [e]xcept . . . as between the parties, a transfer by an owner is not effective until

this Code section and Code section 40-3-33 have been complied with; and *no purchaser or transferee shall acquire any right, title, or interest in and to a vehicle purchased by him unless and until he shall obtain from the transferor the certificate of title thereto, duly transferred in accordance with this Code section.*

O.C.G.A. §40-3-32(d) (emphasis added). Mr. Graves may claim rights in the truck against his vendor because the statute protects rights *between the parties, id.* (emphasis added); see also Bank South, N.A. v. Zweig, 217 Ga. App. 77, 456 S.E.2d 257 (1995), but the statute is clear as to the importance of obtaining a certificate of title with one's name listed as owner as it pertains to third party interests. Debtors argue that the trustee may not assert an interest in the transaction because the sale was "completed" some 5 months prior to the bankruptcy filing. This argument misses the point of §40-3-32(d), that any third-party may rely at any time on a certificate of title as conclusive of ownership. The debtors indirect argument that the trustee is an alter-ego of the debtor and is therefore not an outsider to the transaction fails as well. The trustee is acting under the jointly administered estate of Mrs. Graves, not as Mr. Graves alter ego.

Without his name on the truck title, Mr. Graves may not claim an interest superior to the trustee in bankruptcy of the named title holder. "As to third parties who may acquire an interest, it is essential that the title transfer be completed." Canal Ins. Co.

v. Woodard, 121 Ga. App. 356, 173 S.E.2d 727, 729 (1970).<sup>2</sup> Accord In re Stewart, 9 B.R. 32, 33 (Bankr. M.D.Ga. 1980) (Motor Vehicle Certificate of Title Act must be strictly construed where third party interests are involved). See also In re Lambert, 10 B.R. 11, 13 (Bankr. N.D. Ind. 1980) ("If cars are separately titled, each [spouse] may claim his or her car. If they are jointly titled, each may claim an exemption in one-half interest in different cars."); In re Rockefeller, 100 B.R. 874 (Bankr. E.D.Mich. 1989), aff'd, 109 B.R. 725 E.D.Mich. 1989) (citing Lambert, supra, debtor/wife not entitled to exemption on truck because she lacked an ownership interest).

The trustee is charged with assembling and protecting the assets of Mrs. Graves' bankruptcy estate. 11 U.S.C. §704(1)-(2). Otherwise, the trustee has no interest in Mr. Graves' claim to an

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<sup>2</sup>Canal Ins. Co. v. Woodard dealt with Georgia Code §68-415a(d), the predecessor to current O.C.G.A. §40-3-32(d), which is identical in its operative terms to current O.C.G.A. §40-3-32(d). Compare

(d) Except as provided in Section 68-416(a) [transfer to or from dealer] and as between the parties, a transfer by an owner is not effective until the provisions of this section and section 68-416(a) have been complied with and no purchaser or transferee shall acquire any right, title, or interest in and to a vehicle purchased by him unless and until he shall obtain from the transferor the certificate of title thereto, duly transferred in accordance with this section.

Georgia Code §68-415a(d) (alterations in original) as quoted in In Stewart, 9 B.R. 32, 33 (Bankr. M.D.Ga. 1980) with O.C.G.A. §40-3-32(d), infra pp. 3-4.

equitable ownership interest in the truck and subsequent claim of exemption. Mr. Graves' claim of exemption in essence reduces the assets of Mrs. Graves' bankruptcy estate available to pay creditor claims in the jointly administered case. As the representative of the bankruptcy estate, the trustee is merely fulfilling his obligation to the jointly administered estate creditors to "collect and reduce to money the property of the estate." See 11 U.S.C. §704(1). A trustee acquires an interest in property of the bankruptcy estate to the extent that such property is to be administered and distributed to creditors. As such, the trustee has certain avoiding powers under 11 U.S.C. §544.<sup>3</sup> The trustee of Mrs.

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<sup>3</sup>11 U.S.C. §544 provides:

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer

Graves' bankruptcy estate, cloaked with the power of a judgment lien creditor, can under the provisions of O.C.G.A. §40-3-32(d) and 11 U.S.C. §544 avoid any claimed transfer of any interest of Mrs. Graves in the truck to Mr. Graves. The trustee as a judgment lien creditor is not a party to the transfer of any interest in the truck and therefore his right to proceed against the truck as an asset of Mrs. Graves' bankruptcy estate is not affected by any claim of an equitable interest by Mr. Graves. In a jointly administered case, the court must give consideration to protecting creditors of different estates against potential conflicts of interest. Fed. R. Bankr. P. 1015(b). To permit Mr. Graves to assert an equitable interest in the truck and exempt that interest would have the effect of reducing the property of Mrs. Graves' estate available to pay creditor claims. The trustee acting under Mrs. Graves' bankruptcy estate has the right and obligation to object to this claimed interest sought to be exempted.

Debtor's reliance upon In re Rutledge, 115 B.R. 344 (Bankr. N.D.Ala. 1990), aff'd, 121 B.R. 609 (N.D.Ala. 1990) is

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to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(b) The trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

misplaced. In Rutledge the issue was whether the debtor's estate had an interest in an automobile when debtor's name was not on the title, but debtor made the payments, provided the trade-in on purchase, and was listed as the insured on the insurance policy. The court did find that the debtor had an "equitable interest" in the car and provided the debtor with the protection of the automatic stay of §362, but in so doing properly relied on the language of §541(a) (all "legal and equitable interests of the debtor" are property of the estate). Rutledge, supra at 345. See also In re Sielaff, 164 B.R. 560 (Bankr. W.D.Mich. 1994) (non-titled debtor had equitable interest in automobile for purposes of §541(a)); Rieser v. Randolph County Bank (In re Masters), 137 B.R. 254 (Bankr. S.D.Ohio 1992) (same). Rutledge dealt with the extent of property of a debtor's estate, not a conflict between claims of property under State law between jointly administered estates.

Under any set of circumstances, the trustee prevails on his objection. If Mr. Graves asserts an equitable interest as a result of the transfer from his grandmother Ms. Chase, state law in this case explicitly provides that an incomplete transfer of ownership in a motor vehicle is effective only between the parties to the transfer and not other entities claiming an interest in the vehicle. Mr. Graves has no interest in the truck as title is in Mrs. Graves' name. If Mr. Graves asserts the transfer of an equitable interest from Mrs. Graves, then her bankruptcy estate



trustee has the avoidance powers under §544 to set aside the transfer.

Trustee's objection to exemption with respect to Frank Donald Graves, Jr.'s claim to the 1992 Chevrolet truck is ORDERED sustained.

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JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 27th day of October, 1995.